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DISCOURSE,

PREACHED AT THE

ASSIZES held at WELLS,

AUGUST the 22d, 1775,

BEFORE

The Honourable Sir GEORGE NARES, Knt.

One of the Justices of his Majesty's Court of COMMON PLEAS;

AND

The Honourable Sir JOHN BURLAND, Knt.

One of the Barons of his Majesty's Court of EXCHEQUER;

BY

The Rev. WILLIAM KEATE, M. A.

Prebendary of WELLS, and Rector of LAVERTON,

In the County of SOMERSET.

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DISCUSSION

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THE REV. WILLIAM KENT, M.A.

PROFESSOR OF

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One of the Justices of his Majesty's Court of COMMON PLEAS;

The Honourable Sir JOHN BURLAND, Knt.

One of the Barons of his Majesty's Court of EXCHEQUER;

A N D

Sir THOMAS CHAMPNEYS, Bart.

High-Sheriff of the County of SOMERSET;

T H I S D I S C O U R S E,

Published at THEIR REQUEST,

I S,

With all due Respect and Deference,

I N S C R I B E D,

By their most devoted, and most

Obedient humble Servant,

T H E A U T H O R.

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One of the Justices of the Supreme Court of Oregon

A

S E R M O N.

MICAH, c. vi. v. 8.

He hath shewed thee, O Man, what is good, and what doth the Lord require of thee, but to do justly, and to love Mercy, and to walk humbly with thy God.

THE principal duties of morality, in which, with piety towards God, the life and substance of all practical religion is included, may be reduced to these two heads, Justice and Mercy. They have by many been considered as sister virtues, mutually supporting and correcting each other, and perfect only when united; or as twin branches from the same stock, which cannot be separated, without injury to both :

both: For Mercy, indiscriminately shewn, would defeat the ends of Justice; and Justice, too rigorously exercised, would become gall and bitterness.

Justice may be considered as two-fold, either public, or private. Public Justice has for its direction the laws of men; private Justice, the laws of nature, and of conscience. Public Justice, therefore, is the more diffusive, as well as more minute; comprehends in it a greater variety of duties, and descends to particulars, which are out of the reach of general animadversion. Public Justice may indeed restrain the outward actions of men, and cleanse the broad and open channel of their lives from manifest pollution; but private Justice controuls the secret motions of the soul, and applies its efficacy to the source and fountain, whence every tendency to ill arises. Public Justice, therefore, must be left to the direction of the laws, and the authority of the magistrate. Our obligations to it, as the guardian and support of every comfort to Society, are universally acknowledged; but the basis, on which it is erected, however broad and general, is notwithstanding circumscribed within certain limits. Hence it is, that private Justice may be considered as having a separate jurisdiction of its own; as that alone can take cognizance of our thoughts, and teach us, that though man pronounce us innocent, we may still appear guilty to ourselves; and that every species

species of circumvention, though existing but in design, or artfully concealed from human enquiry, is no less palpably apparent, than essentially criminal, before the all-seeing Eye of Heaven.

* *Thou shalt not steal*, is a law enforced by every sanction human and divine; but transgressions against it are less frequent in the direct forms of theft and robbery, which are always attended with manifest danger of detection, than by the indirect methods of fraud and imposition, which may be too often practised with impunity: because they may be conducted with such artfulness and secrecy, as to elude discovery, and not endanger our credit with the world.—It is but too evident that offences may be committed against Conscience, though the law be literally complied with; and even instances are common, where the iniquity may be obvious, and yet no penalty be made to reach it.

The discovery of offences does, indeed, subject the offenders to the severity of the laws. But there was a time, when there was no law in force expressly prohibiting, or inflicting punishments for, particular

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offences,

* Exodus xx. 15.

offences. Was the injustice less then, than it is now? Whatever was in its own nature just or unjust, is eternally and unchangeably the same, whether it is observed or not. Laws cannot alter the nature of right and wrong. In positive political institutions, indeed, they may create the offence, and annex the penalty to it; but in matters which are of absolute and universal obligation, their operation is more confined. There they can only declare the guilt, not make it, nor can they in any instance punish merely for the intention, unaccompanied with the actual commission. There are many immoral actions practised now, which the law has not ranked in the catalogue of transgressions; yet still they are as much offences against equity and good conscience, as much included under the denomination of sin, as if particular statutes had declared them, and prescribed their punishment. For as it is the intention, that constitutes the crime; if that be dishonest, (though in the estimation of the law, it is only discoverable in the act) yet in itself it is perfectly immaterial; whether it breaks out into act, or not; and Conscience, the interior judge, shall equally pronounce its condemnation. That honesty is founded upon too narrow and contracted principles, that can regulate itself by the force of human ordinances only, which may indeed guard against some visible and immediate inconvenience, or its more probable and apparent consequences; but cannot provide for every

every remote contingency, which accident may introduce, or fraud suggest. Conscience, therefore, is the only direction, where there is not a written law to be found ; and is the best security for our observing it, where there is.

* *Behold, here I am: witness against me before the Lord, and before his anointed; whose ox have I taken? or whose ass have I taken? or whom have I defrauded? whom have I oppressed? or of whose hand have I received any bribe to blind mine eyes therewith? and I will restore it to you.* Such was the unanswerable challenge, with which the Prophet Samuel gave defiance to the children of Israel. I hope, for the honour of mankind, that the Prophet was not singular in this confidence in his integrity. But refined notions of justice, I fear, are not familiar to the generality. Honesty from principle is but rarely and with difficulty to be met with. In the present condition of things a more negative kind of justice must content us; and happy should we esteem ourselves, if, when all restraints from conscience are ineffectual, the authority of the laws, and the dread of punishment, could on any terms secure us from oppression. All other motives from a corrupt and vicious world are perhaps not to be expected; but the duties of public

* 1 Samuel, xii. 3.

public justice, as recommended by the magistrate, and enforced by the sanction of fear and punishments, one should think, might have some influence. Indeed the great outlines of our duty are strongly marked out to us, and, to save the appearances of honesty, in some cases sufficiently observed: But where the law (not so sagacious in foreseeing, as the human mind is fruitful in inventing) has left any evasion for subtlety, obedience in these cases is hardly ever looked upon as necessary, and conscience itself, by some self-consoling casuistry, readily avoids the obligation. The intention of the lawgiver, we well know, extended to the crime in general; but the application of it to our particular case, was by accident overlooked, and therefore we do not think ourselves responsible; or perhaps the crime itself was candidly supposed too atrocious to be attempted, and therefore no provision was made against it. In some countries, many ages had elapsed before the law had prescribed any punishment, or had even a distinguishing name for Parricide. The very aggravated sin, of killing a father or a mother, was possibly deemed a species of murder so shocking to humanity, that it was, from a principle of charity, judged impracticable. In all great and crying violations of the laws of justice, scarce any man can pretend ignorance, and the consequences of such violations are in general very familiar to us. And though there ever were, and always will be, some
daring

daring examples of gigantic vice ; and these melancholy and awful occasions are continually reminding us, that no degree of sin is unattempted by some amongst us ; yet it is to be hoped the far greater part of mankind are not so lost to the feelings of humanity towards others, or to a sense of the consequences affecting themselves both here and hereafter. Where these enormities are committed, the authority of the magistrate interposes. With that province we presume not in this place to interfere. It is the lesser and more hidden deviations from the rule of equity and right, which it is our duty to correct ; which are always the more dangerous, as they are the less suspected ; and which, free from public animadversion, call for private justice to controul them.

It may not be possible perhaps to follow the crafty wiliness of the heart through all its shifts and intricacies ; nor indeed to enter into all the little arts, which men, the most shallow and dull in other respects, have, by constant attention to one object, been capable of practising, to oppress their neighbours. Where we are able to detect them, it is our business to hold them up to public infamy ; where we are not, to leave them to the accusations of their own conscience. The ideas of common justice, and those unerring distinctions of good and evil, of right and wrong, which every man carries in his own breast, must,

in these cases, be his direction ; and a firm persuasion that, though he eludes the vigilance of Earthly Judges, there is an Eye above, from whose search neither darkness nor mountains shall conceal him, and at whose tribunal no criminal intention, though for want of opportunity not yet called into action, or through accident defeated in the execution, shall claim any exemption from punishment upon such pretences.

The other branch of duty recommended in the text, and immediately opposed to that which the magistrate fulfils in punishing offences, is the remission of the punishment, or the pardoning of the offences. Now properly speaking, this, in its utmost latitude, is the prerogative alone of Heaven. There is but one, in whom this controuling and dispensing power is vested with security ; who seeing always before him all the attendant circumstances, as well as the farthest extent and consequence of every action, and who, fathoming the intention and secret motives of every one that is arraigned at this earthly bar, can be the only adequate judge of our degree of guilt, or of our plea to mercy. Man in many instances can attend only to appearances ; and whatever be the result of his decision, if he has judged impartially and conscientiously from those appearances, he has discharged his duty, and is not
accountable

accountable for the event. It is a melancholy truth, it must be confessed,—but in our finite system, and at all human tribunals unavoidable,—that justice has at some times been too rigorously exacted, and even innocence fallen a sacrifice undistinguished from guilt; whilst, at other times, in the display of mercy, many an irreclaimable offender has from that weak compassion, which, though essentially different, often assumes the name of clemency, escaped the just execution of his sentence, and triumphed over law and justice.

Mercy, therefore, in its most enlarged idea, is the attribute alone of the Almighty: And those, who are in this instance his representatives, may have it in their power to imitate, in some degree, this most amiable of the divine perfections. But still the application of this duty, as well as the execution of justice, must in some cases be erroneous; since from the weakness and imperfection of the human faculties, from the variety of appearances, which cannot be taken in at one view, and from the perplexity and difficulty which often attend those appearances, no man can be so infallible, as always to determine right.

To err then on the merciful side, may be thought the safer and more pardonable error of the two. Far be it from me to entertain a thought to the prejudice of Mercy, or to sully the brightness of that jewel,
without

without whose assistance, even justice cannot appear in its full lustre. For where the utmost degree of certainty cannot be discovered, or where particular circumstances and situations plead evidently for some alleviation or remission of the punishment, the ties of nature and humanity must give the bias, always to spare, and not to kill. But where the evidence of guilt is too forcible, and the well-being of society calls for some public example of substantial justice; there, if, through a too cautious timidity in not undertaking the prosecution of delinquents; or from an ill-timed compassion in being backward to urge their condemnation; or if, dreading the character of implacable and relentless magistrates, we let loose again those scourges upon the world, who so far from being intimidated by their late danger, are but so much the more encouraged to go on boldly in iniquity, and set authority at defiance; in all such cases, mercy ceases to be a virtue, and is itself an infringement of social duty.

But does not the religion of the mild and merciful Jesus recommend to us, every where throughout the gospel, the forgiveness of injuries? And do we not pray continually to our Father, who is in Heaven, to *forgive us our trespasses, as we forgive them that trespass against us?*—

Most assuredly we are under every obligation to comply with this injunction. For how are we to expect forgiveness, if, like the unrelenting

fervant

servant in the gospel, we deny that mercy to our fellow-servants, which we have but just experienced in the *same* distress ourselves?—But in almost all the instances of this kind, if the passages themselves be candidly examined, and others which enforce the opposite duty as strongly, be compared with them, we shall find that private and personal injuries chiefly are intended. The consequence of extending this general remission to all cases indiscriminately, must be extremely prejudicial to societies, and defeat the efficacy of many a well-timed example. The point which we contest, is not, whether every affront or injury to every particular person, should be prosecuted with the extreme severity of justice. The wrongs of individuals, it is certainly more generous to forget, than to resent: But when this indulgence is carried beyond its due bounds, and interrupts the ordinary course of justice; it may then be worth our consideration, whether mercy itself does not become, unintentionally indeed, the instrument of injustice; the sure, though accidental cause of many and fatal mischiefs to the community. In crimes of a private nature, and which, though they may all perhaps partially affect society, yet do not threaten its dissolution, lenity to particulars may be discretionary; and where the pardon of one is not insisted on to the prejudice of the many, is a duty we all owe to each other, and is generally included in “the Love of Mercy;” but where the public welfare is concerned, “to do justly,” is a prior and

more lasting obligation. Let justice be supported, and justice shall uphold the world.

It may be deemed an unnecessary task to recommend so earnestly the strict enforcement of justice. The world, it will be said, is but too well inclined to exact that with the most rigorous impartiality from others, however disposed they are to expect a relaxation of it in their own case. But the fact is, we are all, without attending to the obvious consequences, too easily biased in favour of indiscriminate lenity; to palliate offences even of the deepest malignity, when the first impression is a little worn off; to consider all punishment as more than adequate to the transgression; and to view with a false compassion those necessary and wholesome sacrifices, which justice requires to be made, to public security. We so admire this quality of mercy in ourselves, and hear it so much extolled by others, that we dread an imputation upon our humanity, if we do not upon all occasions affect it, or are not thought to be possessed of it by the world. But by this means, justice is too often warped by affection, and truth sacrificed to sensibility; tenderness to individuals counteracts the general interest; and our duty to the public gives way to favour and false ideas of popularity.

One reason, probably, why mercy has been so much preferred to justice, is this ; that mankind are well aware it is more their interest to trust to mercy than to justice. We are all certainly more or less guilty before God ; and to say that mercy shall not interpose, were to “ affright “ mankind” (as a learned Author* expresses it) “ with the terrible “ prospect of universal damnation.”——Fear and hope are the two great springs of human actions : Upon these hangs all the efficacy of rewards and punishments, which have such influence upon our lives, and are the main support and bulwark of all religion. But however powerfully the former of these may operate upon the prospect of immediate danger ; that danger once removed, or seen in a more distant view, the generality of men are more inclined to have recourse to hope, and to presume with confidence on absolution. We know how difficult it is to reconcile to our ideas, justice infinite, and mercy infinite ; and therefore concluding hastily, that one or other must predominate in the eternal mind, are apt to flatter ourselves, that this will have the preference, which has already our wishes and inclinations.

I would not be understood to define the extent or limits of the mercies of the Judge of Heaven and Earth. I wish to have as enlarged ideas of his

his clemency as of his justice. I would not say, that for every sin of unavoidable infirmity, we must be called to judgment, and that no degree of guilt, however circumstanced, shall escape eternal vengeance : But this caution I most seriously recommend to you, not to trust too much to clemency ; well knowing, that though our righteous and merciful Judge cannot but determine right, our sentence is to us at least uncertain ; and that uncertainty should create in us some diffidence and apprehension ; and teach us not boldly to presume upon impunity, but to wait with trembling hope for that awful and irreverfible judgment, which God shall then pronounce.

One way in all probability to obtain mercy, is, not to think ourselves too fecure, nor to leave all to fo hazardous an iffue : A fecond, where it is practicable, is to fhew mercy : For, as St. James * fays, *he fhall have judgment without mercy, that fhewed no mercy.* But the moft effectual way is to do juftly ; for as the Pfalmift† tells us, *it is he that walketh uprightly, and worketh righteousnefs, that fhall abide in the tabernacle of the Lord, and dwell in his holy hill.* If it be poffible, let there be no occafion to feparate juftice from mercy ; but let both, like the
two

* Cap. ii. 13.

† Pfalm xv. 1, 2.

two contending powers which, philosophy tells us, uphold the universe, be mutually aiding to each other, and though with opposite directions, yet conspiring to the same end. Thus shall the * *nation be exalted*, and the † *throne established for ever*, when § *mercy and truth are met together, and righteousness and peace have kissed each other.*

* Prov. xxix. 14.

† Prov. xiv. 34.

§ Psalm lxxxv. 10.

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